

EXHIBIT 26

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Case No. 5:14-cv-05344-BLF (PSG)

Plaintiff,

**DEFENDANT ARISTA NETWORKS, INC.'S
THIRD SUPPLEMENTAL RESPONSES TO
PLAINTIFF CISCO SYSTEM INC.'S FIRST
SET OF INTERROGATORIES
(NOS. 10, 12 & 13)**

v.

ARISTA NETWORKS, INC.,

Judge: Hon. Beth Labson Freeman

Defendant.

Date Filed: December 5, 2014

CONTAINS CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER

1 copyright in the command “show policy-map interface” and Cisco further alleges that Arista’s
 2 purported use of the command “show interfaces flowcontrol” infringes Cisco’s purported
 3 copyright in the command “show flowcontrol.” Further differences between the asserted and
 4 accused copyrighted work(s) are set forth in Arista’s responses to Cisco’s Interrogatory No. 12.
 5 These differences also preclude infringement.

6 Fact discovery is ongoing and Arista is continuing to investigate and analyze the facts
 7 relating to this interrogatory. Additionally, Cisco has not yet provided full discovery into the
 8 creation, fixation, and authorship regarding its copyright assertions for each of the purportedly
 9 copyrighted commands, command hierarchies, command modes, and command responses. Arista
 10 reserves all rights to amend and supplement its response as discovery and Arista’s investigation
 11 continues.

12 **INTERROGATORY NO. 12:**

13 Explain in detail all factual and legal bases for Your contention that any use Arista made
 14 of Cisco’s copyrighted material was a fair use.

15 **RESPONSE TO INTERROGATORY NO. 12:**

16 Arista incorporates its General Objections above as though set forth in this response.
 17 Arista objects to this interrogatory to the extent it seeks information that is already in the
 18 possession, custody, or control of Cisco, or that is publicly available. Arista objects to this
 19 request to the extent it calls for, or may be construed as calling for, information protected from
 20 discovery by the attorney-client privilege, work product doctrine, or any other common law or
 21 statutory privilege or protection. Arista further objects to the request to “explain” factual bases as
 22 vague and ambiguous. In addition, Arista objects to this interrogatory to the extent it prematurely
 23 calls for expert opinion in advance of the disclosure required by Federal Rule of Civil Procedure
 24 26(a)(2). Arista objects to this request to the extent it prematurely calls for a legal conclusion.
 25 Arista further objects to this request as premature given that discovery in this action has only
 26 recently begun, and Arista’s investigation in this matter is ongoing.

27 Subject to and without waiving the foregoing general and specific objections, Arista
 28 responds as follows:

1 Any alleged use Arista made of Cisco's copyrighted material was a fair use that is not
 2 actionable. Until Cisco identifies which copyrighted works it is asserting in this action, and
 3 discloses the basis for its infringement allegations, this interrogatory is premature. After Cisco
 4 discloses its allegations, Arista will provide its response in the appropriate form and at the
 5 appropriate time.

6 Arista's investigation is ongoing. Arista reserves the right to supplement and/or amend
 7 this response with additional information.

8 **FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:**

9 Arista incorporates its General Objections above as though set forth in this response.
 10 Arista objects to this interrogatory to the extent it seeks information that is already in the
 11 possession, custody, or control of Cisco, or that is publicly available.

12 Arista further objects to this interrogatory on grounds that it is premature and improper
 13 because Cisco, despite its recent interrogatory supplementation, has still not identified with
 14 sufficient clarity which copyrighted works it is asserting in this action with respect to which
 15 features or aspects Arista allegedly infringes. For example, Cisco has not identified every alleged
 16 "command hierarchy" that it accuses Arista of copying, and the specific copyrighted work(s) that
 17 purportedly extend copyright protection over each such "command hierarchy." Rather, Cisco has
 18 only provided one exemplary diagram of a so-called "command hierarchy," and did not identify
 19 any copyrighted work(s) that purportedly extends protection over that "hierarchy." Similarly,
 20 Cisco has failed to identify any of the alleged authors for each of the 500+ IOS CLI commands
 21 over which it asserts copyright protection in this litigation, and has similarly failed to identify the
 22 date that each such CLI command was allegedly first fixed in a tangible form of expression.
 23 Arista therefore objects to this interrogatory as improper given that Cisco, as the purported
 24 copyright holder, has still not provided Arista with basic authorship and creation date information
 25 for each CLI command, command hierarchy, command response, and command mode over which
 26 it asserts copyright protection.

27 Arista further objects to this request to the extent it calls for, or may be construed as
 28 calling for, information protected from discovery by the attorney-client privilege, work product

1 doctrine, or any other common law or statutory privilege or protection. Arista also objects to this
 2 interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated
 3 to lead to the discovery of admissible evidence, and in particular, objects to the request to
 4 “explain” factual bases as vague and ambiguous. In addition, Arista objects to this interrogatory
 5 to the extent it prematurely calls for expert opinion in advance of the disclosure required by
 6 Federal Rule of Civil Procedure 26(a)(2), and to the extent it prematurely calls for a legal
 7 conclusion. Arista further objects to this interrogatory as premature given that Cisco only
 8 recently supplemented its interrogatory responses with respect to its copyright claims (many of
 9 which remain deficient), and Arista’s investigation in this matter is ongoing. In addition, Cisco
 10 has refused to narrow its copyright assertions and continues to accuse over 500 different CLI
 11 commands of copyright infringement. If Cisco insists on accusing over 500 different CLI
 12 commands in this litigation, it must provide a reasonable amount of time for Arista to investigate
 13 and provide responses to discovery relating to those hundreds of commands.

14 Subject to and without waiving the foregoing general and specific objections, Arista
 15 responds as follows:

16 Any alleged use Arista made of Cisco’s copyrighted material was a fair use that is not
 17 actionable. There are substantial differences between the accused Arista EOS and Cisco IOS
 18 operating systems, including different features and functionality, different source code, different
 19 programming languages, and different performance metrics. The syntax of each accused CLI
 20 command and the parameters and functionality each command supports are also different
 21 between EOS and IOS. Moreover, the copyrighted work(s) and/or asserted elements thereof
 22 relating to CLI functionality are functional and factual, and not creative, and merely permit
 23 customers to configure and use Arista networking equipment using industry standard, legacy, and
 24 customary vocabulary. Additionally, the disputed CLI commands comprise only a small fraction
 25 of the copyrighted work(s) at issue in this litigation. Arista also incorporates by reference its
 26 responses to Interrogatory No. 10 as though fully set forth in this response.

27 Fact discovery is ongoing and Arista is continuing to investigate and analyze the facts
 28 relating to this interrogatory. Additionally, Cisco has not yet provided creation, fixation, and

1 authorship information regarding its copyright assertions for each of the CLI commands,
 2 command hierarchies, command modes, and command responses. Arista will continue to amend
 3 and supplement its response as appropriate.

4 **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:**

5 Arista incorporates its General Objections above as though set forth in this response.
 6 Arista also incorporates its specific objections set forth in prior supplemental responses to this
 7 particular Interrogatory as though set forth in this response. Arista also incorporates the
 8 objections set forth in its Second Supplemental Response to Interrogatory No. 10 as through set
 9 forth in this response.

10 Subject to and without waiving the foregoing general and specific objections, Arista
 11 supplements its response as follows:

12 Arista incorporates the entirety of its Second Supplemental Response to Interrogatory No.
 13 10 as through set forth in this response.

14 Fact discovery is ongoing and Arista is continuing to investigate and analyze the facts
 15 relating to this interrogatory. Additionally, Cisco has not yet provided full discovery into the
 16 creation, fixation, and authorship regarding its copyright assertions for each of the purportedly
 17 copyrighted commands, command hierarchies, command modes, and command responses. Arista
 18 reserves all rights to amend and supplement its response as discovery and Arista's investigation
 19 continues.

20 **INTERROGATORY NO. 13:**

21 Explain in detail all factual and legal bases for Your contention that Cisco's claims are
 22 barred in whole or in part by scenes a faire, the merger doctrine, and/or other limits on the scope
 23 of protection available for the works at issue.

24 **RESPONSE TO INTERROGATORY NO. 13:**

25 Arista incorporates its General Objections above as though set forth in this response.
 26 Arista objects to this interrogatory to the extent it seeks information that is already in the
 27 possession, custody, or control of Cisco, or that is publicly available. Arista objects to this
 28 interrogatory to the extent it calls for, or may be construed as calling for, information protected from

1 PROOF OF SERVICE
2

3 I am employed in the City and County of San Francisco, State of California in the office of a
 4 member of the bar of this court at whose direction the following service was made. I am over the
 5 age of eighteen years and not a party to the within action. My business address is Keker & Van
 6 Nest LLP, 633 Battery Street, San Francisco, CA 94111-1809.

7 On November 10, 2015, I served the following document(s):
8

9 **DEFENDANT ARISTA NETWORKS, INC.'S THIRD SUPPLEMENTAL RESPONSES
 10 TO PLAINTIFF CISCO SYSTEM INC.'S FIRST SET OF INTERROGATORIES
 11 (NOS. 10, 12 & 13)**

- 12 by **E-MAIL VIA PDF FILE**, by transmitting on this date via e-mail a true and correct copy
 13 scanned into an electronic file in Adobe "pdf" format. The transmission was reported as
 14 complete and without error.
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1 Executed on November 10, 2015, at San Francisco, California.

2 I declare under penalty of perjury under the laws of the State of California that the above is true
3 and correct.

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5 */s/Roseann Cirelli*
6 ROSEANN CIRELLI
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